



August 17, 2005

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane
Room 1061
Rockville, Maryland 20852

Re: Docket No. 2004N-0463 – Food Labeling; Prominence of Calories

Dear Sir or Madam:

By advance notice of proposed rulemaking ("ANPRM") published in the *Federal Register* of April 4, 2005 (70 FR 17008), the Food and Drug Administration ("FDA") has requested comments on whether to amend certain provisions of the agency's nutrition labeling regulations to give more prominence to calories on food labels.

Juice Products Association ("JPA") is a trade association whose regular membership consists of 68 processor companies located throughout the United States, Canada, Europe, and South and Central America. Its regular members include major packers and distributors of a wide variety of fruit and vegetable juices, juice beverages and drinks, jams, jellies, fruit spreads and other fruit products. JPA represents a significant majority of the juice and juice beverage processors in the United States. JPA offers the following comments in response to FDA's request.

FDA's request for comments was, according to the ANPRM, prompted by recommendations contained in the final report of the Obesity Working Group ("OWG") created by the Commissioner of Food and Drugs in August 2003. That report focused on a "calories count" emphasis for FDA as a result of the OWG's conclusion that weight control is primarily a function of a balance between calories consumed and calories expended. Among the several recommendations made by the OWG to FDA were that FDA (1) develop options for revising or adding caloric and other nutritional information on food packaging, (2) obtain information on the effectiveness of these options in affecting consumer understanding and behavior relevant to caloric intake, and (3) evaluate this information to make evidence-based decisions on which options to pursue.

JPA appreciates the opportunity to comment in response to the ANPRM, and commends FDA's efforts to consider changes to the food label to address the continuing problems presented by the increasing trend toward obesity and overweight in the United States. However, as will be

noted in the comments that follow, research is needed to determine whether the changes considered in the ANPRM will be of use to consumers in addressing obesity.

The possible options suggested by the OWG for giving more prominence to calories on the food label were (1) increasing the font size for calories, (2) providing for a %DV for calories, and (3) eliminating the listing of "calories from fat," as it may take emphasis away from the listing of "calories." In the ANPRM, FDA has requested comments on a number of specific questions, and JPA's comments with respect to some of those questions follows.

A. Questions Concerning Prominence of Calorie Information on Food Labels

Would consumer awareness of the caloric content of packaged foods be increased by amending nutrition labeling regulations to give more prominence to the declaration of calories per serving?

JPA believes that an answer to this question at the current time would be speculative at best because further research is needed. As recognized in the ANPRM, the report of the OWG stated that while most consumers are familiar with the nutrition information on food labels, the percentage of consumers who use information on the nutrition facts panel productively for weight management purposes is low. As stated in the report:

Despite reports of a positive correlation between label use and certain positive dietary characteristics, the trend toward obesity has accelerated over the past decade. It may be that consumers do not take advantage of the available information on the food label to control their weight, perhaps because they do not appreciate how the information could be used for weight management purposes or perhaps because they find it too hard to apply the available information to such purposes. In any case, it is clear that consumers would benefit if they were to pay more attention to and make better use of information, including calories, on food labels. Providing encouragement and making it as easy as possible for consumers to do so are worthy public health objectives.

The possible reasons listed in the report for the acceleration of the trend toward obesity over the past decade could also have included that perhaps those who tend toward obesity or overweight do not use, or simply ignore, the information presented in the nutrition facts panels of foods.

Both the ANPRM and the OWG report that prompted it recognize that the trend toward obesity has accelerated despite the presence on food labels of more information than was available a decade ago prior to the passage of the Nutrition Labeling and Education Act of 1990 and FDA's implementing regulations. They also recognize that many consumers have used the information on the nutrition facts panels of foods for other positive dietary considerations. JPA submits that before FDA proposes any of the three options suggested by the OWG for increasing the prominence of calories on the food label, the other recommendations of the OWG with respect to additional research and education should be pursued. It should be remembered that – in terms of prominence – calories is already the first item to appear after the serving size for the food in the nutrition facts panel.

How would a more prominent listing of calorie information change the way consumers use the NFP (Nutrition Facts Panel) in deciding what to eat?

As was the case with the question immediately above, JPA submits that an answer to this question is premature until additional research and education have been conducted. The OWG's report suggests that consumers are able to, and do, make use of the NFP for purposes other than weight management. Research should focus on whether calorie information presented on the NFP is clear, and simply not used or ignored, or is unclear to the extent it is not useful to consumers in managing weight. The research should also focus on what changes consumers believe would make the calorie information more useful for this purpose.

A major concern is whether enhanced prominence of calorie information will lead consumers to a LESS nutritious diet. Calorie information should not overshadow other important nutrition information, such as percent juice declaration, lest consumers would purchase less nutritionally wholesome drinks. One of the motivating principles of more prominent calorie information on the label is that food manufacturers will be incented by consumer demand to reformulate their products to reduce calories. However, this is not possible for 100% juice products, which are required by FDA regulation (21 CFR 101.30) to maintain their designated Brix (sugar solids) level and therefore their calories. Since juice manufacturers cannot reduce calories in their 100% products, overemphasizing calories on juice labels will likely drive consumers away from the nutritious 100% juice products to less nutritious non-juice alternatives.

What methods could be considered for increasing prominence? For example, should the font size be increased for the listing of "Calories" from the current requirement of 8-point type, and/or should extra bold type or a different style of type be used?

In the case of juices, several have standards of identity which define the composition of the final product, including the °Brix, or sugar content. Under the circumstances, increasing the font size (or requiring extra bold and/or a different style of type) would highlight the calorie content of juices to the detriment of beneficial attributes, such minerals and essential vitamins. It could also lead certain consumers to believe that the products contain added sugar. To this extent, consumers might be dissuaded from the other positive uses they appear to be making of the information presented on the NFP under FDA's current nutrition labeling regulations.

Would providing for a %DV disclosure for total calories assist consumers in understanding the caloric content of the packaged food in the context of a 2,000-calorie diet? Why or why not?

Research, coupled with additional education, will provide answers to this question. If caloric information is not used, or is ignored, by the consumer, it is doubtful that putting such information in the form of a %DV will be of assistance in getting consumers to use the calorie information for weight management purposes. Research could focus on whether consumers use and understand the %DV for the nutrients for which it currently appears on the NFP, and whether they use the %DV at all (focusing instead only on the quantity of the nutrients with which they are individually concerned). Additionally, as the MyPyramid philosophy regards each consumer as an individual, and identifies their daily nutritional intake based on unique needs, the %DV will vary for individual consumers based on their height, weight, physiology, age, etc, making the %DV variance illustrated by the 2000 calorie standard misleading.

B. Questions Concerning Calories from Fat

Virtually all of the questions posed by FDA in the ANPRM on the subject of calories from fat suggest areas in which research should be conducted prior to proposing any changes in the current treatment of calories from fat in the NFP. The OWG report cites studies that show a positive correlation between a low-fat diet and food label use. In addition, the FDA focus group research referenced in the OWG report, although not comprehensive or conclusive, suggested that the consumer participants in the focus groups tended to care more about some macronutrients (including fat) than others, depending on their individual dietary practices.

While the OWG's recommendation that FDA publish this ANPRM included eliminating the "calories from fat" listing in the NFP, it did so only as one possible alternative and only in the context of its overall recommendation that the ANPRM seek comments on how best to give more prominence to calories. While needed research may reveal that the OWG's rationale for possible elimination of the "calories from fat" listing from the NFP was correct, it may also reveal that the "calories from fat" listing is more used by and useful to consumers than the listing of total calories. In summary, JPA believes further research is required on all of the suggested changes to the NFP before FDA proposes any of them.

C. Questions About Use of Calorie Information on Food Labels

The NFP was designed to present in a single location on food labels information about calories, serving size and nutrient content. Whether or not consumers use the information presented on the NFP, they at least know where to look for the information contained in it. JPA opposes any mandatory requirement that calorie information of any kind be displayed on the principal display panel of foods but believes food manufacturers should be able to voluntarily present such information, should they choose, in a truthful, non-misleading manner. As noted above, that would likely drive consumers to less nutritional, non-juice beverages.

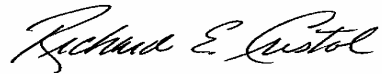
Other Questions

The remaining questions posed by FDA in the ANPRM require research to determine the answers. (See parts C and D of the ANPRM.) JPA supports FDA's conduct of the research suggested by those questions and the questions to which the above comments are directed. JPA does not support changes to the current NFP unless such changes are clearly mandated by the results of the needed research. JPA also questions whether changes to FDA's current labeling regulations can ever be effective in motivating consumers toward more healthful eating and drinking habits without a commitment by FDA and other government agencies to the educational efforts recommended by the OWG report. A more consistent message between the 2005 Dietary Guidelines, the NFP and the message of individual responsibility conveyed by MyPyramid would be an example.

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JPA appreciates the opportunity to comment on the important issues raised in the ANPRM.

Respectfully,

A handwritten signature in cursive script, reading "Richard E. Cristol". The signature is written in black ink and is centered on the page.

Richard E. Cristol